installation of such products before they can be used in production.[85] The application of the principles in this paragraph is further explained and illustrated in §§ 776.18 and 776.19.

§ 776.18 Employees of producers for commerce.

(a) *Covered employments illustrated.* Some illustrative examples of the employees employed by a producer of goods for interstate or foreign commerce who are or are not engaged in the ''production'' of such goods within the meaning of the Act have already been given. Among the other employees of such a producer, doing work in connection with his production of goods for commerce, who are covered because their work, if not actually a part of such production, is ''closely related'' and ''directly essential'' to it,[86] are such employees as bookkeepers, stenographers, clerks, accountants and auditors, employees doing payroll, timekeeping and time study work, draftsmen, inspectors, testers and research workers, industrial safety men, employees in the personnel, labor relations, advertising, promotion, and public relations activities of the producing enterprise, work instructors, and other office and white collar workers; employees maintaining, servicing, repairing or improving the buildings,[87] machinery, equipment, vehicles, or other facilities used in the production of goods for commerce,[88] and such custodial and protective employees as watchmen, guards, firemen, patrolmen, caretakers, stockroom workers, and warehousemen; and transportation workers bringing supplies, materials, or equipment to the producer's premises, removing slag or other waste materials therefrom, or transporting materials or other goods, or performing such other transportation activities, as the needs of production may require. These examples are intended as illustrative, rather than exhaustive of the group of employees of a producer who are ''engaged in the production'' of goods for commerce, within the meaning of the Act, and who are therefore entitled to its wage and hours benefits unless specifically exempted by some provision of the Act.

(b) *Employments not directly essential to production distinguished.* Employees of a producer of goods for commerce are not covered as engaged in such production if they are employed solely in connection with essentially local activities which are undertaken by the employer independently of his productive operations or at most as a dispensable, collateral incident to them and not with a view to any direct function which the activities serve in production. It is clear, for example, that an employee would not be covered merely because he works as a domestic servant in the home of an employer whose factory produces goods for commerce, even though he is carried on the factory payroll. To illustrate further, a producer may engage in essentially local activities as a landlord, restauranteur, or merchant in order to utilize the opportunity for separate and additional profit from such ventures or to provide a convenient means of meeting personal needs of his employees. Employees exclusively employed in such activities of the producer are not engaged in work ''closely related'' and ''directly essential'' to his production of goods for commerce merely because they provide residential, eating, or other living facilities for his employees who are engaged in the production of such goods.[89] Such employees are to be distinguished from

[85] See *Walling* v. *Hamner*, 64 F. Supp. 690 (W.D. Va.).

[86] See H. Mgrs. St., 1949, p. 14; Sen. St., 1949 Cong. Rec., p. 15372. See also *Borden Co.* v. *Borella*, 325 U.S. 679.

[87] No distinction of economic or statutory significance can be drawn between such work in a building where the production of goods is carried on physically and in one where such production is administered, managed, and controlled. *Borden Co.* v. *Borella*, 324 U.S. 679.

[88] Such mechanics and laborers as machinists, carpenters, electricians, plumbers, steamfitters, plasters, glaziers, painters, metal workers, bricklayers, hod carriers, roofers, stationary engineers, their apprentices and helpers, elevator starters and operators, messengers, janitors, charwomen, porters, handy men, and other maintenance workers would come within this category.

[89] H. Mgrs. St., 1949, pp. 14, 15; see also *Brogan* v. *National Surety Co.*, 246 U.S. 257. Cf. Sen. St., 1949 Cong. Rec., p. 15372.

employees like cooks, cookees, and bull cooks in isolated lumber camps or mining camps, where the operation of a cookhouse may in fact be ''closely related'' and ''directly essential'' or, indeed, indispensable to the production of goods for commerce.[90]

Some specific examples of the application of these principles may be helpful. Such services as watching, guarding, maintaining or repairing the buildings, facilities, and equipment used in the production of goods for commerce are ''directly essential'' as well as ''closely related'' to such production as it is carried on in modern industry.[91] But such services performed with respect to private dwellings tenanted by employees of the producer, as in a mill village, would not be ''directly essential'' to production merely because the dwellings were owned by the producer and leased to his employees.[92] Similarly, employees of the producer or of an independent employer who are engaged only in maintaining company facilities for entertaining the employer's customers, or in providing food, refreshments, or recreational facilities, including restaurants, cafeterias, and snack bars, for the producer's employees in a factory, or in operating a children's nursery for the convenience of employees who leave young children there during working hours, would not be doing work ''directly essential'' to the production of goods for commerce.[93]

[90] See *Brogan* v. *National Surety Co.*, 246 U.S. 257; *Consolidated Timber Co.* v. *Womack,* 132 F. 2d 101 (C.A. 9); *Hanson* v. *Lagerstrom,* 133 F. 2d 120 (C.A. 8); cf. H. Mgrs. St., 1949, pp. 14, 15 and Sen. St., 1949 Cong. Rec., p. 15372.

[91] H. Mgrs. St., 1949, p. 14; Sen. St., 1949 Cong. Rec., p. 15372; *Kirschbaum* v. *Walling,* 316 U.S. 517; *Borden Co.* v. *Borella,* 325 U.S. 679; *Walton* v. *Southern Package Corp.* 320 U.S. 540; *Armour & Co.* v. *Wantock,* 325 U.S. 126.

[92] H. Mgrs. St., 1949, pp. 14, 15; *Morris* v. *Beaumont Mfg. Co.,* 84 F. Supp. 909 (W.D. S.C.); cf. *Wilson* v. *Reconstruction Finance Corp.*, 158 F. 2d 564 (C.A. 5), certiorari denied, 331 U.S. 810. Cf. *Brogan* v. *National Surety Co.*, 246 U.S. 257; *Consolidated Timber Co.* v. *Womack,* 132 F. 2d 101 (C.A. 9); *Hanson* v. *Lagerstrom,* 133 F. 2d 120 (C.A. 8).

[93] Cf. H. Mgrs. St., 1949, pp. 14, 15.

§ 776.19 Employees of independent employers meeting needs of producers for commerce.

(a) *General statement.* (1) If an employee of a producer of goods for commerce would not, while performing particular work, be ''engaged in the production'' of such goods for purposes of the Act under the principles heretofore stated, an employee of an independent employer performing the same work on behalf of the producer would not be so engaged. Conversely, as shown in the paragraphs following, the fact that employees doing particular work on behalf of such a producer are employed by an independent employer rather than by the producer will not take them outside the coverage of the Act if their work otherwise qualifies as the ''production'' of ''goods'' for ''commerce.''

(2) Of course, in view of the Act's definition of ''goods'' as including ''any part or ingredient'' of goods (see § 776.20 (a), (c)), employees of an independent employer providing other employers with materials or articles which become parts or ingredients of goods produced by such other employers for commerce are actually employed by a producer of goods for commerce and their coverage under the Act must be considered in the light of this fact. For example, an employee of such an independent employer who handles or in any manner works on the goods which become parts or ingredients of such other producer's goods is engaged in actual production of goods (parts of ingredients) for commerce, and the question of his coverage is determined by this fact without reference to whether his work is ''closely related'' and ''directly essential'' to the production by the other employer of the goods in which such parts or ingredients are incorporated. So also, if the employee is not engaged in the actual production of such parts or ingredients, his coverage will depend on whether as an employee of a producer of goods for commerce, his work is ''closely related'' and ''directly essential'' to the production of the parts or ingredients, rather than on the principles applicable in determining the coverage of employees of an independent employer who does not